STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND

WGIC d/b/a Beve,	:	
Appellant,	:	
	:	**DBR No. 19LQ008**
v.	:	
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	

DECISION

I. INTRODUCTION

On or about February 27, 2019, the City of Providence, Board of Licenses ("Board") issued a decision against WGIC d/b/a Beve ("Appellant") essentially revoking its Class BVX (extended hours) license and reducing it hours of operation on all licenses for at least six (6) months to midnight and imposing a $4,000 administrative penalty.[1] Pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-21, the Appellant appealed the Board's decision to the Director of the Department of Business Regulation ("Department"). The undersigned was designated by the Director of the Department to hear the appeal. The Appellant filed a motion to stay to which the Board objected and an order granting the stay was issued on March 4, 2019. The appeal hearing was held on April 12, 2019. The parties were represented by counsel who rested on the record.[2]

[1] The Board ordered the Appellant to close at midnight for at least six (6) months at which time the Appellant could request a later closing time. At the Board hearing, the Board reduced the hours of operation for all City licenses, but the Department does not have jurisdiction over those licenses. Appeals to the Department can only relate to the liquor license held by the Appellant. See *El Nido v. Goldstein*, 626 A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license).

[2] The undersigned received the transcript of hearing on April 30, 2019.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUES

Whether the Appellant engaged in the violations as found by the Board, and if so, what are the appropriate penalties.

IV. MATERIAL FACTS AND TESTIMONY

At the Board hearing, Sergeant David Tejada ("Tejada"), Providence Police Department, testified on behalf of the City. He testified that he responded to the Appellant because of complaints about loud music emanating from the establishment. He testified that the Appellant is at 345 Atwells Avenue directly next door is a large condominium with retail on the first level and residences above, and the two (2) buildings practically touch one another. He testified that he responded to unit 304 and spoke to Gary Garafona. He testified that he, Tejada, was able to hear music from the Appellant. He testified that he went to unit 204, which is directly below unit 304, and he could hear music (the bass, lyrics) permeating the walls. He testified he went to the Appellant and its music was same that he had heard at the condominium. He testified that when he went inside the Appellant, there were very large speakers and the music was loud and one could not have a conversation. He testified that he spoke to the owner outside, and he could hear the music then as well. He testified that he showed the owner the relevant statute, R.I. Gen. Laws § 5-22-1.1, about entertainment. He testified the Appellant does not have an entertainment license. On questioning from the Board, he testified that the location used to be a smoking lounge with some incidental music. It was stipulated that this incident occurred at 11:30 p.m.

Gary Garafano ("Garafano") testified on behalf of the City. He testified he lives at 333 Atwell's Avenue in unit 304 which is on the side closest to the Appellant. He testified that he and his wife have lived there over five (5) years and on January 12, 2019, he called the police because of loud music. He testified the music usually starts about 10:00 p.m. and goes to 2:00 a.m. and the noise gets worse when patrons open the door. He testified that his building runs along Atwells Avenue and goes back to Sutton Street. He testified that the Appellant and his building are about six (6) inches apart. He testified that the units on his side of the building can hear the music. He testified there is music Monday, Wednesday, Thursday, Friday, Saturdays, and Sundays. He testified that the Appellant was supposed to be a cigar lounge, but now seems to be a nightclub.

David DiCola ("DiCola") testified on behalf of the City. He testified that he lives at 333 Atwell's Avenue in unit 207 with his father who is 101 years old. He testified that his unit is not right next to the Appellant. He testified that he could hear the music from his unit on January 12, 2019 from his father's room which is closer and from his room which is the farthest away. He testified that his windows face Sutton Street so that they can see the back of the Appellant's building. He testified he has lived there for ten (10) years. He testified that night he heard the music at 11:00 p.m. He testified the music gets worse as the Appellant's doors are opened and closed. He testified that the Appellant's front door is on Atwells Avenue but there is a rear door to parking and a patio so when the rear door is opened, the music gets louder.

Tejada also testified regarding January 19, 2019. He testified that he responded to the Appellant because of noise complaints and he could hear the music from the outside. He testified he went inside and the large speakers were no longer there but the sound level was close to January 12. He testified that he spoke to the owner outside and told him the music needed to be at a level

where people could still have conversations inside. He testified that they spoke in the outside patio and the outdoor furniture was no longer there but when the back door opened the music got louder.

Tejada also testified regarding January 27, 2019 at which time he responded to the Appellant about complaints about loud music. He testified he could hear the music outside from the street on the Appellant's side. He testified that he reminded the owner to turn the music down. He testified that music was about the same level as previously; though, January 12 was the loudest night. On cross-examination, Tejada testified that since January 27, 2019, he has received complaints about the Appellant but has not investigated them. On questioning from the Board, he testified that the Appellant is very small with a capacity of probably under 50.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. The Appeal before the Department

After the end of prohibition of liquor within the United States, Rhode Island implemented a new system of statewide control of liquor coupled with local authority to grant certain licenses. See P.L. 1933 ch. 2013. The intent of the new system was to eliminate the old unsupervised system of local regulation that resulted in a lack of uniformity and grave abuses that seriously affected the public welfare and instead vested broad powers of control and supervision in a state system. *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265 (R.I. 1939).[3]

In keeping with the Department's statewide oversight and mandate to "establish a uniformity of administration of the law for purpose of promoting temperance throughout the state," the Department has broad statutory authority to review liquor appeals. *Baginski,* at 268. See also *Tedford et al. v. Reynolds*, 141 A.2d 264 (R.I. 1958). *Baginski* held that since the Department[4] is a "superlicensing board," it has the discretion to hear cases "*de novo* either in whole or in part." *Baginski*, at 268. Thus, an appeal may hear new testimony in part and/or may rely on the hearing before the local licensing authority. However, as the review is *de novo* the parties start afresh during the appeal but the Department has the discretion to review the local authority partially *de novo* and partially appellate as seen fit. *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Since the

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[3] *Baginski*, at 266-267, found as follows:

> Chapter 2013 is a familiar and well-recognized example of the legitimate exercise of the police power. *Tisdall v. Board of Aldermen*, 57 R.I. 96, 188 A. 648. The act is entitled an act to promote temperance and to control the manufacture, transportation, possession and sale of alcoholic beverages. Its chief purpose may, without question, be said to be the safeguarding of the public health, safety and morals. *Clark v. Alcoholic Beverage Commission*, 54 R.I. 126, 170 A. 79.
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> *** Where, before, the emphasis was exclusively on control locally, now it is predominantly on state control. This is evident in many sections of the act. Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is state-wide; and correspondingly, that state supervision and control, either originally in some phases or ultimately in others, alone can adequately cope with it. However, along with the incorporation into the law of this new idea, there has been retained a remnant of local administration. An example of this is the right of local boards to grant and to revoke, at least in the first instance, class C licenses. Such licenses correspond to the retail licenses, popularly known as saloon licenses under the old law.

[4] At that time the alcoholic beverage commission.

Department is charged with ensuring statewide uniformity, it follows that the statutory scheme grants the Department the authority to revise or alter decisions of local boards. *Id.* Further, since the liquor appeal hearing is a *de novo* hearing rather than an appellate review of what occurred at the municipal level, any alleged error of law or fact committed by the municipal agency is of no consequence. *Id.* See also *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function).

In this matter, there was a *de novo* hearing on the suspension and revocation. The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. Thus, this appeal is not bound by the Board's reasons for suspension or revocation but whether the Board presented its case for revocation or suspension before the undersigned. The undersigned will make her findings on the basis of the evidence before her and determine whether that evidence justifies said revocation and the penalty.

As the Department has statewide authority and indeed the statutory intent is to ensure statewide consistency, the Department reviews sanctions to ensure statewide consistency and appropriateness in the situation. It also supports progressive discipline barring the rare and extreme event where revocation may be warranted without prior discipline. It also accepts the principles of comity and deference to the local authorities and their desire to have control over their own town or city. At the same time, pursuant to R.I. Gen. Laws § 3-2-2 and R.I. Gen. Laws § 3-7-21, the Department ensures that tensions between local boards and licensees are settled in a consistent manner. Nonetheless, there is not a mechanical application of sanctions as each matter has its own sets of circumstances. See *C&L Lounge, Inc. d/b/a Gabby's Bar and Grille; Gabriel L. Lopes v. Town of North Providence*, LCA – NP-98-17 (4/30/99). Thus, the unevenness in the application of a sanction does not make it unwarranted in law. *Pakse Market Corp. v. McConaghy*,

2003 WL 1880122 (R.I. Super.) (upholding revocation for a series on infractions). However, a sanction must be proportional to the violation and if there is an excessive variance in a sanction than it will be found to be arbitrary and capricious. *Jake and Ella's* 2002 WL 977812 (R.I. Super.). In reviewing local authorities' decisions, the Department ensures that local authorities' sanctions are not arbitrary and capricious and that statewide such sanctions are consistent and appropriate (otherwise sanctions would be arbitrary).

In order to impose discipline, cause must be found. R.I. Gen. Laws § 3-7-6 provides that applications for retail liquor licenses may be denied for cause. *Chernov Enterprises, Inc. v. Sarkas*, 109 R.I. 283 (1971) found that cause shall mean, "we have said that a *cause*, to justify action, must be *legally sufficient*, that is to say, it must be bottomed upon substantial grounds and be established by legally competent evidence." *Id.* at 287 (italics in original).

An appeal proceeding held pursuant to R.I. Gen. Laws § 3-7-21 is considered a civil proceeding. See *Board of License Commissioners of Tiverton v. Pastore*, 463 A.2d 161 (R.I. 1983). In civil proceedings, unless otherwise specified, the burden of proof generally needed for moving parties to prevail is a fair preponderance of the evidence. *Jackson Furniture Co. v Lieberman*, 14 A.2d 27 (R.I. 1940). See also *Parenti v. McConaghy*, 2006 WL 1314255 (R.I.Super.); and *Manny's Café, Inc. v. Tiverton Board of Commissioners*, LCA TI-97-16 (11/10/97) (Department decision discusses burden of proof for proceedings held pursuant to R.I. Gen. Laws § 3-7-21). Thus, in order to sanction a liquor license, there must be substantial grounds established by the preponderance of legally competent evidence.

Most appeals to the Department are made pursuant to R.I. Gen. Laws § 3-7-21, but under that statute, the Department does not have authority to hear appeals of fines. However, the Superior Court found the Department has implied jurisdiction to review administrative fines imposed by local boards

pursuant to R.I. Gen. Laws § 3-5-21. See *The Rack, Inc. d/b/a Smoke v. Providence Board of Licenses,* 2013 WL 3865230 (R.I.Super.). The Court found that the Department does not have to apply a *de novo* standard of review to appeals of administrative fines but that it must review the record and articulate and document a substantial, non-arbitrary rationale for invoking its discretion to dismiss appeals of fines imposed by local licensing boards and that the exercise of such discretion must be reasonable. The Court further found that if the monetary fine imposed on a licensee by a local liquor licensing board is within statewide limits set by statute then such a finding by the Department may be sufficient basis for the Department to dismiss a licensee's appeal. *Id.* at pp. 14-17.

C. Relevant Statutes

R.I. Gen. Laws § 3-5-21 provides in part as follows:

> Revocation or suspension of licenses – Fines for violating conditions of license. (a) Every license is subject to revocation or suspension and a licensee is subject to fine by the board, body, or official issuing the license, or by the department or by the division of taxation, on its own motion, for:
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> (1) Breach by the holder of the license of the conditions on which it was issued; or
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> (2) Violation by the holder of the license of any rule or regulation applicable; or
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> (3) Any fraudulent act or "material misrepresentation" made by an applicant for a license or a licensee, including, but not limited to, any misrepresentation of information upon which the licensing board reasonably relies in rendering any decision concerning a license, licensee, or establishment; or
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> (4) Breach of any provisions of this chapter.

R.I. Gen. Laws § 5-22-1.1 provides as follows:

> Live entertainment – City of Providence. The board of licenses for the city of Providence is authorized to license, regulate, or prohibit "live entertainment" in the city of Providence, including, but not limited to, live performances of music or sound by individuals, bands, musicians, disc jockeys, dancing, or karaoke, with or without charge, provided that "incidental entertainment" be permitted as of right, and no license shall be required. "Incidental entertainment" means background music provided at a restaurant, bar, nightclub, supper club, or similar establishment, limited to the following format:

(1) Live music performance limited to no more than a maximum of three (3) acoustic instruments that shall not be amplified by any means, electronic or otherwise; or

(2) Prerecorded music or streamed music played over a permanently installed sound system. If a bar or restaurant includes incidental entertainment, it cannot charge a cover charge; shall not allow dancing by patrons of the establishment; cannot employ flashing, laser, or strobe lights; and the maximum volume, irrespective of the format, is limited solely to the boundaries of the premises at all times, and shall permit audible conversation among patrons of the establishment.

D. Arguments

The City argued that the Appellant is located on Atwells Avenue so cannot obtain an entertainment license due to a 2012 City Ordinance. The City argued the music is emanating from the Appellant and not only can be heard outside but can be heard inside the building next door. The City argued that the violations were on three (3) successive weekends so that this matter could not just be handled with a monetary penalty. Instead, the City argued that the Board crafted a penalty where the establishment which said it would be a cigar bar could still operate as it said it wanted to operate but ensuring the Appellant did not negatively impact its neighbors. Also, the City argued that the Board did not the restrict the hours in perpetuity but allowed the Appellant to come back after six (6) months. The City argued that if the Department is not inclined to uphold the Board's penalty, a thoughtful considered penalty is needed to ensure that the Appellant is operated in a reasonable manner for the neighborhood.

The Appellant argued that it was willing to be kept on a short leash and the Department had required that in its stay decision, but the Board never scheduled any hearings with the Appellant as provided for in the stay decision. The Appellant argued that the appropriate penalty would be to make the Appellant go the Board every 30 days to review the status and allow the Board to have control of the situation.

E. Whether There Were Violations of R.I. Gen. Laws § 3-5-21

The evidence was undisputed that on January 12, January 19, and January 27, 2019, the Appellant played music that could be heard outside including on January 12, 2019 when it was heard in the building next door and on all three (3) nights, the Appellant's patrons would have been unable to have a conversation inside. As a result, the Appellant is in violation of R.I. Gen. Laws § 5-22-1.1 for each night so that the Appellant violated R.I. Gen. Laws § 3-5-21 on three (3) different occasions by violating the applicable rule and regulation of licensing.

F. Administrative Penalties

R.I. Gen. Laws § 3-5-21(b) provides that a first offense by a liquor licensee shall be fined $500 with the fine for each subsequent offence not to exceed $1,000. R.I. Gen. Laws § 3-5-21 establishes minimum fines for violations. Thus, the first offense is for any offense of the liquor licensing law and the subsequent offense is for any subsequent offense of the liquor licensing laws rather than pinpointing whether the violation is the first or subsequent offence of a specific statutory or regulatory violation. This interpretation is supported by the fact that the statute provides for a clean slate for all offenses if the licensee has not had any offenses for three (3) years. In other words, the first offense of the liquor statute cannot be fined more than $500 with each subsequent offense of the liquor licensing law not being fined more than $1,000 but if the licensee has no offenses for three (3) years, the clock is re-set and any violation would be considered a first offense.

G. Prior Sanctions

The Appellant's only prior discipline was a warning in 2018 (no administrative penalty) for entertainment without a license and capacity.

H. What Sanctions are Justified

The Department's statutory mandate and role as a superlicensing authority informs its decisions on ensuring that sanctions are not arbitrary and capricious. Indeed, when it fails in its obligation to backstop local authorities' decisions, the Superior Court will overturn the Department's decision. See *Jake and Ella's v. the Department of Business Regulation*, 2002 WL 977812 (R.I.Super. 2002).

In *Pakse*, the Department and Superior Court upheld the progressive discipline imposed on said licensee for repeated underage violations. The Court found that the local authority was authorized to impose a reasonable sanction that would deter the licensee from repeatedly violating the law, and the Department found that the local authority's imposition of a two (2) day suspension for the first offence with progressively harsher sanctions for the second and third offense, and revocation for the fourth was not arbitrary and capricious because it was based on the premise that the licensee's continued (repeated) violations posed a danger to the community. Thus, the Court upheld the Department's conclusion that revocation represented a reasonable punishment after the logical progression of suspension sanctions related to repeated violations posing a public danger. In contrast to *Pakse*, the Superior Court overturned the Department in *Jake and Ella*'s finding that a license revocation was arbitrary and extreme. In that matter, the licensee had two (2) after-hour violations with the first violation receiving a monetary sanction and the second violation receiving a revocation. The Court found that the Department ignored the concept of proportionality that was expected to be applied so that there was an abuse of discretion. The Court found that sanctions need to be reasonably related to the severity of the conduct and in considering the type of sanction to be imposed, factors such as real/potential danger to the public, the nature of any previous violations sanction, the type of violations, and other relevant facts should be considered. In that

matter, the local authority jumped from a monetary fine to a revocation for identical violations without a finding that the violations were egregious and extreme. The Department has consistently reviewed local decisions in light of the concept of progressive discipline as well as proportionality in terms of types of violations unless the violation is so egregious as to warrant immediate revocation. Thus, the Department ensures that the sanctions that are imposed are proportional to the violations and that progressive discipline is followed as appropriate.

In terms of progressive discipline, as discussed above the imposition of sanctions is not based on a mechanical grid and must be proportional (e.g. appropriate progressive discipline). Thus, if a licensee received a ten (10) day suspension for disorderly conduct and then violated conditions of licensing by one (1) after-hour violation, it does not follow that the sanction must be higher than the ten (10) day suspension for the prior disorderly violation, but rather the sanction would be more than if it would be for a first violation.

The Department's statutory mandate and role as a superlicensing authority informs its decisions on ensuring that sanctions are not arbitrary and capricious. In this matter the Board jumped from a warning for one (1) entertainment without a license violation to a revocation of the extended license and the imposition of the rollback of hours for the Class BV license for three (3) noise violations as well as imposing monetary penalties. By doing so, the Board failed to impose progressive discipline to serve as a corrective. *Pakse* and *Jake and Ellas*.

At the Department hearing, the Board argued that it carefully crafted a solution to the Appellant's problems. However, when the Department issued the stay it provided that the Appellant appear as soon as possible before the Board to provide an updated business plan and thereafter every 30 days to provide the Board with updates regarding its plan to mitigate the noise from any incidental music. Apparently, the Board did not schedule any such hearings for the

Appellant after the stay up to the hearing date.[5] One would assume that the Board would want to participate in oversight of its licensees. In terms of applying corrective discipline and guidance, the Department looks to the Board to provide that oversight.

The Board imposed a $1,000 administrative penalty for a violation of R.I. Gen. Laws § 3-5-21(c) which provides that a violation maybe found for a "material misrepresentation" made by an applicant for a license, including any misrepresentation of information upon which the licensing board reasonably relied in rendering a decision concerning a license. While at its hearing, the Board took notice that the Appellant was to be a cigar bar when it applied for a license, no evidence was introduced at hearing (e.g. license application, transcript of licensing hearing) that such a representation was made to the Board by the Appellant **and** that the Board reasonably relied on it in making its licensing decision. Therefore, the Department does not find that there was a violation of R.I. Gen. Laws § 3-5-21(c) by the Appellant.

Based on the foregoing, in light of progressive discipline and proportionality of sanctions as well as weighing the type of violations and reviewing prior cases, the January 12, 2019 violation merits a $500 penalty with the two (2) subsequent violations meriting each a $1,000 administrative penalty. The statute provides that the maximum penalty for a second offence within three (3) years is $1,000. As the violations were so close together that merits the maximum administrative penalty for the two (2) subsequent violations. In addition, the fact that the three (3) violations were so close together, the third violation merits a two (2) day suspension of the Class BVX license.[6]

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[5] The undersigned does not know if any such hearings were scheduled after the Department hearing date of April 12, 2019.

[6] These series of violations do not represent a series of infractions as detailed in *Pakse* that rise to the level of justifying revocation. For example in *Secretos, LLC v. City of Providence, Board of Licenses*, DBR No.: 15LQ010 (8/11/15), there were ten (10) R.I. Gen. Laws § 3-5-21 violations (nonviolent) that occurred after three (3) prior R.I. Gen. Laws § 3-5-21 violations. The new violations merited a 22 day suspension of liquor license and administrative penalties because of the types of violations (included overcapacity). When prior discipline has been more severe, non-disorderly conduct violations merit higher sanctions especially when some occurred during the late night license's suspension for prior violations. See *Ciello, LLC v. City of Providence, Board of Licenses*, DBR No.: 18LQ004 (5/28/18).

Nonetheless, the Appellant needs to ensure its ongoing compliance with the music and noise requirements. The Appellant has removed the large speakers. It represented that it is trying to mitigate the noise. Clearly the easiest way to do that is to keep the music volume down low so that it is only ambient music as required by statute. The Appellant may also want to consider installing soundproofing material and addressing the issue of the opening and closing of the door.

In considering an application for a Class BVX license for an existing Class BV as well as an indoor expansion where there were noise concerns, the Department provided that the application would be granted dependent on certain conditions whereby the applicant would provide certain updates to the Board. *La Base Sports Bar & Grill v. City of Providence, Board of Licenses*, DBR No. 10-L-0037 (4/6/11). Similarly, this type of situation should result in the Appellant being monitored by the Board. If the Appellant cannot maintain compliance on a go forward basis, then the Board will most likely impose an hours' roll-back to prevent late night violations of R.I. Gen. Laws § 3-5-21. The following conditions are imposed on the Appellant's liquor license:[7]

1. Only incidental music be played so that the Appellant complies with R.I. Gen. Laws § 5-22-1.1 (e.g. cannot hear music outside, must be able to hear conversation inside, no strobe lights, etc.).

2. The Appellant shall appear at the Board as soon as possible after the issuance of this decision and then every 30 days to provide an update on its plan to mitigate noise from any incidental music. E.g. keeping the volume down to inside its establishment.

[7] Such monitoring is consistent with T*hompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986) (a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages).

3. When the Appellant appears before the Board for the first time after the issuance of the decision, it shall provide an updated business plan to the Board. If the Appellant decides to vary from this business plan, it shall so inform the Board prior to any change in its business plan.

4. After one (1) year from this decision, the Board shall decide whether the Appellant shall continue to appear monthly or whether the Appellant should appear quarterly, everyone other month, or not at all, etc.

VI. FINDINGS OF FACT

1. On February 27, 2019, the Board issued a decision against the Appellant essentially revoking its Class BVX (extended hours) license and reducing hours of operation on all licenses for at least six (6) months to midnight and imposing a $4,000 administrative penalty

2. Pursuant to R.I. Gen. Laws § 3-7-21 and R.I. Gen. Laws § 3-5-21, the Appellant appealed the Board's decision to the Director of the Department.

3. A *de novo* hearing was held on April 12, 2019 before the undersigned sitting as a designee of the Director. The parties were represented by counsel who rested on the record.

4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-2-1 *et seq.*, R.I. Gen. Laws § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. The Appellant violated R.I. Gen. Laws § 3-5-21(2) three (3) times.

3. The Appellant did not violate R.I. Gen. Laws § 3-5-21(3).

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the following sanctions be imposed on the Appellant: an administrative penalty of $2,500 and a two (2) day suspension of the Class BVX license.[8] In addition, as set forth above, certain conditions are imposed on said license.

Dated: May 22, 2019

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

_____ ADOPT
_____ REJECT
_____ MODIFY

Dated: 5/28/19

Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

[8] The administrative penalties are due by the 31st day after this decision is issued. The two (2) day suspension shall be served on the first Friday and Saturday after the 31st day of this decision is issued. Thus, if the 31st day from when this decision is issued is a Wednesday then that Friday and Saturday, two (2) and three (3) days later, shall be the days the suspension is in effect.

CERTIFICATION

I hereby certify on this 28th day of May, 2019 that a copy of the within Order was sent by first class mail, postage prepaid to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903 MMartone@providenceri.gov and Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, peter330350@gmail.com, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.